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In The

# Supreme Court of the United States

October Term, 1993

JEFFERY D. SCOTT,

*Petitioner,*

v.

STATE OF ALASKA,

*Respondent.*

**On Petition For Writ Of Certiorari To The Supreme Court Of Alaska**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether the determination of an Alaska Native village as a tribe for purposes of inherent sovereignty is a factual inquiry.

2. Or, in the alternative, whether the Secretary of the Interior's recent express federal recognition of the Native Village of Northway as an Indian tribe is a non-justiciable political question demanding judicial recognition by the State of Alaska.

## PARTIES TO THE PROCEEDINGS

The parties to the proceedings are Jeffery D. Scott, petitioner, and the State of Alaska, respondent.

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v.

STATE OF ALASKA,

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On Petition For Writ Of Certiorari
To The Supreme Court Of Alaska

## PETITION FOR WRIT OF CERTIORARI

Jeffery D. Scott respectfully petitions for a Writ of Certiorari to review the decision of the Supreme Court for the State of Alaska in this case.

## OPINIONS BELOW

The Alaska Supreme Court denied the petition for hearing in an unpublished order (Appendix A, App. A-1) *Scott v. State*, S-6114 (Alaska Jan. 24, 1994). The Memorandum Opinion and Judgment issued by the Alaska Court of Appeals is unpublished in *Scott v. State*, COA No. A-4789 (Alaska Ct. App. Nov. 24, 1993) (*See* Appendix B, App. B-1). The Order issued by the District Court on December 31, 1992 is unpublished. (Appendix C, App. C-1).

## JURISDICTION

Jurisdiction of this Court to review the Alaska Supreme Court's decision in this matter is conferred by 28 U.S.C. Sec. 1257(3). The decision of the Alaska Supreme Court was filed on January 24, 1994.

## STATEMENT OF THE CASE

This case arises out of the harvest of a moose for subsistence purposes by Scott, a non-Native, and an Athabascan Indian, Lavelle Jimmie, who both lived in the Native Village of Northway in Alaska. The moose was shot by Jimmie on May 8, 1992 on the north bank of the Nabesna River upriver from the village, located approximately 250 miles southeast of the city of Fairbanks.

The location of the harvest was within the Tetlin National Wildlife Refuge, which is largely federal public lands. It was also located on land which had been interim-conveyed to Northway Native, Inc., the village corporation for the Native Village of Northway pursuant to the *Alaska Native Claims Settlement Act (ANSCA)*, 43 U.S.C 1601 *et seq.*[1]

Scott was cited for a misdemeanor on May 8, 1992 by Alaska State Trooper Chuck Thorsrud for "Unlawful Possession of Game Moose" pursuant to 5 A.A.C. 92.140(a)

[1] The interim conveyance of the tract (designated I.D. 964) was made on November 9, 1984 pursuant to 43 U.S.C. 1613 and conveyed surface rights to the village corporation. Subsurface rights for the same tract were conveyed to Doyon Ltd., the regional corporation, pursuant to Interim Conveyance 965.

for assisting in the transport of the moose meat. Portions of the meat were found by the trooper in a smokehouse.

The historic ancestors of the Native Village of Northway are confirmed by the presence of Upper Tanana Athabascan peoples residing on the Chisana and Nabesna River drainages at the time of direct white man contact in the 1880s.[2]

Several trading posts were managed in the area, beginning in 1909 and 1910 with excursions by a Captain Northway from Fairbanks to the lower Nabesna River. *Case* at pg. 16. Four posts were located over the years near a camp site of the lower Nabesna River people near the present community site of Northway. *Id.*[3]

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[2] Martha F. Case, *Wild Resource Use in Northway Alaska.* Published by the Alaska Department of Fish and Game, Div. of Subsistence, June 1986, pg. 14.

In the 1920s, the Old Nabesna camp on the east bank of the Nabesna River had reportedly been in use for two generations by members of the Old Nabesna band. *Id.* at pg. 19. The Old Nabesna band inhabited the lower Chisana River from Gardiner Creek to its mouth, and the lower Nabesna River from approximately the Cheslina River to the mouth, and the confluence of the two rivers and the beginning of the Tanana River. *Id.* at pg. 24.

Members of this band travelled northward to the upper Ladue drainage, and utilized the lakes and streams south to the Black Hills east of the Nabesna River. *Id.* This constituted an area approximately 50 miles north-south and 25-30 miles east-west. *Id.* Two camps on the Nabesna River, called Nabesna Village of Old Nabesna, and Dry Creek, as well as several fish camps in the lower Nabesna and Chisana River area were occupied by this bank in the mid-20th century. *Id.*

[3] In the early 1940s the Old Nabesna settlement moved to its present location along the east bank of the Nabesna River to

Contemporary hunting areas for residents of the Native Village of Northway fall within former band territories, the descendants of which comprise a large portion of the current local hunting population. *Id.* at pg. 59.[4]

Athabascan is a linguistic family which includes Indians from Alaska, across Canada and extending down to the Canadian border.[5] The governmental organization of the semi-nomadic Indian tribes was not a complicated one. Each tribe was headed by an elected chief who had only as much authority as the individuals were willing to grant him.[6]

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avoid river erosion. *Case* at pg. 17. The Alaska Highway along the northern edge of the valley was completed in 1942, and an airstrip was constructed approximately seven miles south of the highway, and two miles from the Nabesna village. *Id.* A graded road connected the airstrip and village to the highway. *Id.* A post office was established in 1941, and the village name was changed to Northway. *Id.* A 1984 study of Northway households by ethnicity showed that 97% of the members of the Northway village were Alaska Natives. *Id.* at pg. 35.

[4] Northway residents harvested an estimated total of 90,091 edible pounds of wild resources between June 1987 and May 1988. Marcotte, James R., *Wild Fish and Game Harvest and Use by Residents of Five Upper Tanana Communities*, pub. by the Alaska Dept. of Fish and Game, Div. of Subsistence, Dec. 1991, pg. 121. Moose hunting was the second largest contributor comprising 26.8 percent of the harvest, with whitefish harvest the highest. *Id.*

[5] See Swann, John R., *Indian Tribes of Alaska and Canada, A Reprint of a Portion of "The Indian Tribes of North America"*, pub. Washington D.C. 1952.

[6] Sturtevant, W.C., *Handbook of North American Indians, Subaractic, Vol. 6*, Smithsonian Institute 1981, pg. 598.

The Athabascans of Interior Alaska populated the region since prior to the coming of the Russians in 1843. The Indians of

The Native Village of Northway is an "Indian tribe" as defined under 43 U.S.C. 1602(c).[7] The village also has

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the Interior were the last to come into contact with white men. When non-Natives entered the Interior of Alaska, they came first to trade, and later, generally, to exploit the natural resources of the indigenous peoples' territories. At first, the traders located their trading posts in or near the natives' semi-permanent settlements or ceremonial meetings places. Later, the trading posts were placed at a distance from the Native villages as the clash of cultural expectations between the Indians and the traders made the traders uncomfortable in close proximity to the Indians. *See Compilations of Narratives of Explorations in Alaska*, Government Printing Office, Washington, D.C. 1900, Report of Schwatka, pp. 341, 343; Report of Raymond, pp. 36-37. *See also* Hulley, Clarence C., *Alaska: Past and Present*, Binfords & Mort, Publishers, Portland, Oregon 1958, pg. 27; pg. 222-229.

After the arrival of the explorer and the trader, the church came soon after, and then the miner. *Alaska; Past and Present* at pp. 222-229. For the most part, the explorer and the miner were transients, leaving for new discoveries, new strikes, and new territories. There remained the trader, the church, and the Indian tribes, *Id.*

[7] 43 U.S.C. 1602(c) states that "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 1610 and 1615. 43 U.S.C. 1610(b)(1) contains a list of Native villages, one of which is the Native Village of Northway.

In *Noatak v. Hoffman*, 896 F.2d 1157 (9th Cir. 1990), *rev. on other grounds, Blatchford v. Native Village of Noutak*, 111 S.Ct. 2578 (1991), the Ninth Circuit found that the Alaska Native Claims Settlement Act (ANSCA) constituted Congressional recognition of Native villages as Indian tribes. In that case, the Ninth Circuit specifically found that the Native Village of Circle was an Indian tribe. This Court did not disturb that part of the Circuit Court's ruling.

The United States Department of the Interior's Solicitor's recent opinion supports the view that the Alaska Native villages listed in ANSCA are presumptively Indian tribes: ". . . we do

an active Tribal Court and Tribal Council. Its Tribal Court hears and makes decisions on matters brought before it pursuant to Tribal Law. The Tribal Council is the local law-making authority.

In the present case, Scott filed a Motion to Dismiss for lack of State jurisdiction, contending that the Native Village of Northway was an Indian tribe with inherent sovereign powers. The incident had occurred in "Indian Country" and Scott had engaged in subsistence activity which benefited the entire tribe. The Northway Tribal Court had authority and jurisdiction to regulate hunting in its Indian Country because of its inherent sovereign powers.

On October 2, 1992 an evidentiary hearing was held in front of the Honorable State of Alaska District Court Judge Charles Pengilly. Judge Pengilly denied the motion, stating that he was summarily denying it as a matter of law, without making any express factual findings. He cited *Native Village of Stevens v. A.M.P.*, 757 P.2d 32 (Alaska 1988) as controlling authority and that this case compelled rejection of Scott's claim, as a preliminary matter, that the Native Village of Northway retained inherent tribal sovereignty powers. This made all other issues moot.

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believe that there is sufficient merit to the first argument for the BIA and other agencies to proceed in the administration of programs on the presumption that Native villages listed on the modified ANSCA list are tribes." *See* Solicitor Memorandum, *Governmental Jurisdiction of Alaska Native Villages Over Land and Non-members*, pg. 59, M-36975, January 11, 1993.

On November 16, 1992 Scott was sentenced by the lower court and reserved the issue of State jurisdiction on appeal. A notice of appeal was filed on January 21, 1993 with the Alaska Court of Appeals, with a formal brief filed on April 5, 1993. On November 24, 1993 the Alaska Court of Appeals issued a three-page decision affirming the lower court's decision. *See* Appendix B.

The Alaska Court of Appeals based their decision solely upon the Alaska Supreme Court's decision in *Stevens v. A.M.P.* also:

> "We are bound by the Supreme Court's decision in *Native Village of Stevens v. A.M.P.* We conclude, did the district court, that the village of Northway is not sovereign. In particular, Scott presented no evidence in the trial court that Congress intended the transfer of land to the village under ANSCA to create an Indian reservation. Absent such evidence, there is no basis on which to consider whether Northway Village might qualify for an exception to the rule of Native Village of Stevens."
>
> MOI No. 2815, pg. 2.

Scott appealed this decision to the Alaska Supreme Court in a Petition for Hearing filed December 9, 1993. The petition was denied without explanation by the court on January 24, 1994. This Petition for Certiorari follows.

## REASONS FOR GRANTING THE WRIT

### A. Summary

The decision of the Alaska Supreme Court is in direct conflict with the opinions of the Ninth Circuit Court of Appeals on a matter of federal Indian law. The Ninth Circuit has held that Alaska Native village sovereignty exists unless and until affirmatively divested by Congress. An express factual inquiry must be made to determine whether a village is an Indian tribe is the modern-day successor to a sovereign historical band of natives. The Alaska State Supreme court's decision specifically rejects this position by upholding the lower court's opinion that the Native Village of Northway is not an Indian tribe as a matter of law, in the absence of factual inquiry. According to Alaska State law, no factual inquiry is required to determine whether an Alaska Native village has tribal status.

As a consequence of this fundamental view, the Alaska Supreme Court's decisions on issues concerning the status of Indian tribes in Alaska are in direct conflict with the Ninth Circuit, and as the Alaska State Supreme Court has noted, are only resolvable by this Court.

The conflicting decisions involve an important legal issue which has a significant impact upon many individuals, tribes, and the State of Alaska's relationship with Indians and Indian tribes. The decision will directly affect over 200 Alaskan tribes, many of which are currently exercising tribal court jurisdiction. This matter will continue to arise as long as the Alaska State courts hold that Alaska Native villages are not Indian tribes as a matter of law.

In the alternative, the Secretary of the Interior's recent express federal recognition of Alaska Native villages as Indian tribes is a non-justiciable political question which demands judicial recognition by the State of Alaska. This decision is instead committed to the Department of Interior, and an opposite conclusion reached by the Alaska State court at this point results in conflict if respect for the executive branch's decision is not given.

## B. Reasons

### I. Direct Conflict Between Ninth Circuit and Alaska Supreme Court.

The ruling of the Alaska Supreme Court affirming the Alaska Court of Appeals' decision directly conflicts with the decision of the Ninth Circuit Court of Appeals in *Native Village of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548 (9th Cir. 1991). In that case, the Ninth Circuit squarely addressed the issue of whether Alaska Native villages are inherently sovereign, specifically the Native Villages of Venetie and Fort Yukon. The Court stated:

> " . . . if native groups in Alaska were sovereign prior to the incorporation of the land mass into the United States, they could lose their sovereignty only by express act of Congress or assimilation by the natives into non-native culture. Indian sovereignty flows from the historical roots of the Indian tribe . . . Tribal sovereignty exists unless and until affirmatively divested by Congress . . . If the native villages of Venetie and Fort Yukon are the modern-day successors to sovereign historical bands of natives, the villages are to be afforded the same rights and responsibilities as are sovereign bands of native

Americans in the continental United States." *Id.* at 558, 559.

In *Native Village of Venetie,* the court reversed the district court and remanded the case for further factual inquiry. The Ninth Circuit used the same analysis in *Native Village of Tyonek v. Puckett,* No. 87-3569, pg. 9 (9th Cir. Mar. 1992) when it remanded the case back to the District Court because it had failed to enter express findings of fact or develop a record to support its conclusion that the Native Village of Tyonek was an Indian tribe protected by sovereign immunity.

The Ninth Circuit also held in an earlier decision that ANSCA corporations may be considered "Indian Country." *Native Village of Tyonek v. Puckett,* No. 87-3569, pg. 354 (9th Cir. Jan. 13, 1992)

On the other hand, the Alaska Supreme Court has taken an opposite view. In *Stevens Village v. A.M.P.,* 757 P.2d 32, 34 (Alaska 1988) the court held that Congress has indicated that Alaskan Native groups should not be treated as sovereigns. *See also In the Matter of F.P.,* 843 P.2d 1214, 1215 n. 1 (Alaska 1992), *cert. den.,* 61 USLW 3669, 113 S.Ct. 2441 (1993) (the Alaska Supreme Court admitting that *Native Village of Venetie* is contrary to *Native Village of Stevens v. A.M.P.* and that "the courts of Alaska are not bound by the decisions of a federal court other than the United States Supreme Court."). *See also Totemoff v. State of Alaska,* COA No. A-4276/4308, pg. 9 (Alaska Ct. App. Dec. 23, 1993) (While several federal cases seemingly allow defendants charged with fish and game violations to raise subsistence-based defenses, no federal court other than the United States Supreme Court can control

the decisions of state courts, even on questions of federal law.)

As a consequence of this fundamental view, the Alaska Supreme Court's decisions on issues concerning the status of Indian tribes in Alaska are in direct conflict with the Ninth Circuit, and, as noted by the Alaska Supreme Court in *F.P.*, are only resolvable by this Court.

The Alaska Court of Appeals based its decision in this case solely on the lower court's unsupported conclusion that Northway was not sovereign, under *Stevens v. A.M.P.* A result of this decision is that the Alaska State court has now decided that ANSCA corporation land is not "Indian Country" as a matter of law, in the absence of factual inquiry. Another result is that judicial determinations of tribal sovereignty are now allowed as a matter of law in the absence of express factual findings. These results not only affect Scott's case and his ability to subsistence hunt in "Indian Country", but also the status of the Native Village of Northway and all other Indian tribes in Alaska.

Unless Congress has expressly ceded its authority, a State is without authority to manage hunting and fishing in "Indian Country." *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 76 L.Ed.2d 611, 627, 103 S.Ct. 2378 (1983). This Court found that the Mescalero Apache Tribe lawfully exercised substantial control over the lands and resources of its reservation, including its wildlife. *Id.* Because of their sovereign status, tribes and their lands are insulated in some respects by a historic immunity from state and local control. *Id.* The sovereignty retained by tribes includes the power of regulating their internal

and social relations. *Id.*; *See also United States v. Kagama*, 118 U.S. 375, 381-382, 30 L.Ed. 228, 6 S.Ct. 1109 (1886); *United States v. Wheeler*, 435 U.S. 313, 322, 55 L.Ed.2d 303, 98 S.Ct. 1079 (1978).

Tribes in general retain this authority to regulate the use of its resources by members as well as nonmembers. *Mescalero* at L.Ed.2d 622; *Montana v. United States*, 450 U.S. 544, 558-559, 67 L.Ed.2d 493, 510-11, 101 S.Ct. 1245 (1981) (the tribe may prohibit nonmembers from hunting and fishing on land belonging to the tribe; a tribe may retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe); *United States v. Winans*, 190 U.S. 371, 381, 49 L.Ed. 1089, 25 S.Ct. 662 (1905) (hunting and fishing were not much less necessary to the existence of the Indians than the atmosphere they breathed).

The Court in *Mescalero* also stated that this aspect of tribal sovereignty has been expressly confirmed by numerous federal statutes. *Id.* at L.Ed.2d 623. P.L. 280 specifically confirms that power of tribes to regulate on-reservation hunting and fishing.[8]

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[8] In *California v. Cabazon Band of Indians*, 480 U.S. 202, 94 L.Ed.2d 244, 254, 107 S.Ct. 1083 (1987), the Court stated that when a State seeks to enforce a law within an Indian reservation under the authority of P.L. 280, it must be determined whether the law is criminal in nature, and thus fully applicable to the reservation or civil in nature, and applicable only as it may be relevant to private civil litigation in state court. The Court employed a new test that originated in *Barona Group of the Captitan*, 694 F.2d 1185 (1982), *cert. den.*, 461 U.S. 929, 77 L.Ed.2d

In *Native Village of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548, 560 (9th Cir. 1991), the court found that P.L. 280 was designed not to supplant tribal institutions, but to supplement them. P.L. 280 is not a divestiture statute. *Id.*[9]

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301, 103 S.Ct. 2091 (1983). In *Barona*, the Court drew a distinction between state "criminal/prohibitory" laws and state "civil/regulatory" laws: if the intent of a state law is generally to prohibit certain conduct, it falls within P.L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct, subject to regulation, it must be classified as civil/regulatory and P.L. 280 does not authorize its enforcement on an Indian reservation. *Id.*

This rule was employed in *Oneida Tribe of Indians of Wisconsin v. State*, 518 F. Supp. 712, 719, 720 (W.D. Wisc. 1981) where the court found that Wisconsin's bingo laws were civil-regulatory, not enforceable by the State in Indian Country. Congress did not intend to allow states to use licensing requirements in an attempt to create jurisdiction to enforce otherwise civil regulations on Indian reservations. *See also Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310 (5th Cir. 1981) (Florida bingo statute is "civil/regulatory", rather than "criminal/prohibitory" in nature); *United States v. Farris*, 624 F.2d 890 (9th Cir. 1980); *United States v. County of Humboldt*, 615 F.2d 1280 (9th Cir. 1980); *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975).

In *United States v. Marcyes*, 557 F.2d 1361 (9th Cir. 1977) the court examined the State's fireworks laws and found that it was prohibitory, rather than regulatory. It stated, "The possession of fireworks is not the same situation encountered in other regulatory schemes such as hunting and fishing, where a person who wants to hunt or fish merely has to pay a fee and obtain a license." *Id.* at 1364.

[9] *Walker v. Rushing*, 898 F.2d 672, 675 (8th Cir. 1990) (P.L. 280 did not itself divest Indian tribes of their sovereign power to punish their own members for violations of tribal law; nothing in the wording of P.L. 280 or its legislative history precludes concurrent jurisdiction).

It is clear that a jurisdictional presumption exists in federal Indian law that a state has no jurisdiction over Indians on reservations unless it has been explicitly granted that jurisdiction. *People of South Naknek v. Bristol Bay Borough,* 466 F. Supp. 870 (D. Alaska 1979).

Finally, the implications of the State court's decision not only detrimentally affects Scott's right to assist the tribe in procuring food, but also directly affects the sovereignty rights of the village and all Indian tribes in Alaska. Scott was within Indian Country and was engaging in essential tribal relations in the customary and traditional practice of subsistence hunting. These essential tribal relations are protected within the tribe's Indian Country. His assistance in procuring food for the tribe had a direct effect upon the tribe's welfare. Therefore, the tribe had an extremely important interest in regulating this activity.

The state had no direct or comparable interest in regulating fish and game within this Indian Country. The State instead has an interest in sustaining fish and game populations for all residents of Alaska, non-Native and Native under its present Constitution.

The tribe's intimate interest in sustaining the existence of the tribe and its intimate familiarity with the fish and game populations within its Indian Country borders far outweigh any interests the State has in asserting its civil jurisdiction there. These tribal interests preempt any asserted State authority.

The lower State court did not reach these issues of the civil authority of the Native Village of Northway to regulate hunting in "Indian Country" and whether ANSCA land was "Indian Country" because it found as a

matter of law that the Native Village of Northway was not an Indian tribe.

The petitioner respectfully requests that this Court reverse the lower court and remand the case back to the lower State court for a full factual inquiry with express findings on the issue of whether the Native Village of Northway is an Indian tribe for purposes of inherent tribal sovereignty.

## II. The Alaska Supreme Court has decided an important question of federal law that conflicts with applicable decisions of this Court.

In January 1993 the Solicitor of the Department of the Interior issued an opinion analyzing the status of Alaska Native villages as Indian tribes. The Solicitor stated:

> " . . . While the Department's position with regard to the existence of tribes in Alaska may have vacillated between 1867 and the opening decades of this century, it is clear that for the last half century, Congress and the Department have dealt with Alaska Natives as though there were tribes in Alaska. The fact that the Congress and the Department may not have dealt with all Alaska Natives as tribes at all times prior to the 1930s did not preclude it from dealing with them as tribes subsequently."
>
> So. Op. M-36, 975, at 46, 47-48 (Jan 11, 1993).

For the purposes of his opinion, the Solicitor found it unnecessary to identify those villages which were tribes, although he stated that the ANSCA village listing and the inclusion of these villages over the years within the definition of "tribe" arguably constituted a congressional

determination that the villages found eligible for benefits under ANSCA are considered Indian tribes for purposes of federal law. *Id.* at 58-59.

On October 15, 1993 the Assistant Secretary of the Interior of Indian Affairs, Ada E. Deer, under the Department of the Interior, announced a new revised list of federally acknowledged Indian tribes in the United States. The announcement stated:

> "The Bureau of Indian Affairs has reviewed the 'modified ANSCA list' of villages and the list of those villages and regional tribes previously listed or dealt with by the Federal Government as governments and found that the villages and regional tribes listed below have functioned as political entities exercising governmental authority and are, therefore, acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of other tribes.
>
> The purpose of the current publication is to publish an Alaska list of entities conforming to the intent of 25 C.F.R. Sec. 83.6(b) *and to eliminate any doubt as the Department's intention by expressly and unequivocally acknowledging that the Department has determined that the villages and regional tribes listed below are distinctly Native communities and have the same status as tribes in the contiguous 48 states. Such acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits from the Federal Government available to Indian tribes.* This list is published to clarify that the villages and

> regional tribes listed below are not simply eligible for services, or recognized as tribes for certain narrow purposes. Rather, they have the same governmental status as other federally acknowledged Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States; are entitled to the same protection, immunities, privileges as other acknowledged tribes; have the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes; and are subject to the same limitations imposed by law on other tribes."
>
> *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs,* pub. pursuant to 25 C.F.R., Part 83, Notice October 15, 1993 by Assistant Secretary of Indian Affairs Ada Deer, Bureau of Indian Affairs.

The Native Village of Northway is on the list recognized as an Indian tribe. *Id.* at pg. 35.

Because of the federal Bureau of Indian Affairs' long experience in determining who is an Indian for a variety of purposes, its determinations are also entitled to great deference. *United States v. Sandoval,* 231 U.S. 27 (1913).

The Bureau of Indian Affairs' determination that the Native Village of Northway is an Indian tribe and the recent Department of Interior's solicitor's opinion is clear and unequivocal federal recognition of the village as an Indian tribe.

According to the Alaska State Supreme Court's analysis in *Native Village of Stevens v. A.M.P.,* 757 at pg. 32-25,

judicial recognition of tribal sovereignty turns on whether Congress, or the executive branch of the federal government, had recognized the particular group in question as a tribe. *See also Atkinson v. Haldane*, 569 P.2d 151, 161-63 (Alaska 1977).

Here, the Native Village of Northway has been officially recognized by the executive branch of the federal government as an Indian tribe.

In *Baker v. Carr*, 369 U.S. 186, 210, 82 S.Ct. 691, 706, 7 L.Ed.2d 663 (1962), this Court listed a series of factors, at least one of which must be present in order to make an issue a non-justiciable political question. These factors included textually demonstrable constitutional commitment of the issue to a coordinate political department; a lack of judicially discoverable and manageable standards for resolving the issue; the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; an unusual need for unquestioning adherence to a political decision already made; and the potential for embarrassment from multifarious pronouncements by various departments on one question. *Id.*

It is clear that in light of these recent decisions made by the Department of Interior and this Court's ruling in *Baker* that the status of Northway as an Indian tribe is a political question committed to the Department of Interior. It is also clear that an opposite conclusion reached by the Alaska State court at this point results in conflict and embarrassment if respect for the executive branch's decision is not given.

The time is ripe for this Court to resolve the unending tug of war between the Alaska courts and the federal government over who has the authority to decide what Alaska Native villages are Indian tribes and whether they retain inherent tribal sovereign powers. This unresolved conflict has resulted in the lack of State court recognition of Indian tribes in Alaska. It is unfair to persons in Alaska who are not afforded their right to be governed by Tribal Law and to tribal governments who lack a government-to-government relationship with the State of Alaska. Finally, it has resulted in years of lengthy and unsuccessful litigation for persons and tribes to prove tribal status to the State of Alaska, even in the face of express federal government recognition of tribal status.

Therefore, the federal government executive branch's acknowledgment of the Native Village of Northway as an Indian tribe is express federal recognition of the sovereign status of the village. This case should be reversed on this issue and remanded to the trial court in light of this clear federal recognition.

## CONCLUSION

For the foregoing reasons, the Alaska Supreme Court's decision should be reviewed and reversed by this Court. The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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